

Appl. No. 10/034,907
Applicant : Ann M. Sutherland et al.
Filed : December 27, 2001
Title : Casement Fabrics
TC/A.U. : 1771
Examiner : J. R. Pierce
Docket No. : 125616-1000

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

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TRANSMITTAL FOR BRIEF ON APPEAL

Pursuant to the Notification of Non-Compliant Appeal Brief dated March 18, 2005 in the above-identified patent application, Appellants hereby submit to the Board of Appeals and Interferences the following:

- An Amended Appeal Brief in triplicate;
- A Request For Extension of Time (2 months); and
- A check for \$225 in payment of the extension fee.

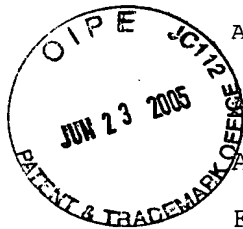
Please charge any additional fees due or credit any overpayments relating to this matter to Deposit Account No. 07-0153.

Respectfully submitted,

Date: 6/20/05

Michael E. Martin
Michael E. Martin
Registration No. 24,821
Agent for Appellants

Gardere Wynne Sewell LLP
1601 Elm Street, Suite 3000
Dallas, Texas 75201-4761
Phone (214) 999-4052
Fax (214) 999-3052



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Anne Ziegler

Anne Ziegler
(Signature of person mailing paper)

Date: *June 20, 2005*

BRIEF ON APPEAL

Sir:

Pursuant to the Notification of Non-Compliant Appeal Brief dated March 18, 2005 in the above-identified patent application, Appellants submit the following Amended Appeal Brief.

REAL PARTIES IN INTEREST

The real parties in interest in the above-identified patent application are the inventors, Ann M. Sutherland and David F. Sutherland.

RELATED APPEALS AND INTERFERENCES

There are no related appeals, interferences or judicial proceedings known to Appellants or Appellants' legal representatives which may be related to, will directly affect or be directly affected by or have a bearing on the Board's decision in the pending Appeal.

STATUS OF CLAIMS

Claims 11 through 16, 18 and 19 are currently pending in this application pursuant to an amendment filed on December 1, 2003.

Claims 1 through 10 and 17 have been canceled.

Copies of Claims 11 through 16, 18 and 19 are attached as an Appendix to this Brief on Appeal.

STATUS OF AMENDMENTS

An amendment was filed on December 1, 2003 in response to a first Office Action dated August 26, 2003. A final rejection of Claims 11 through 16, 18 and 19, filed in the amendment of December 1, 2003, was mailed on March 1, 2004. A Notice of Appeal from the final rejection was filed on May 24, 2004 and an Appeal Brief, in triplicate, was filed on July 23, 2004. Prosecution was reopened by the Examiner in an Office Action dated October 20, 2004. Appellants were given the option to request reinstatement of the Appeal and to file a Supplemental Brief. Appellants filed a request for reinstatement of the Appeal and a Supplemental Brief, in triplicate, on January 19, 2005. A notification of Non-Compliant Appeal Brief was mailed on March 18, 2005.

SUMMARY OF CLAIMED SUBJECT MATTER

Independent Claim 11 on appeal is directed to a light transmitting window covering panel formed of a fabric comprising staple fiber acrylic yarn woven in groups of warp threads and groups of weft threads, the fiber content of the yarn being about 100% pigmented acrylonitrile polymer. Referring to the drawing and the specification on page 5, paragraph 0014, beginning on line 2, window covering panels (20) or (22) are formed of fabric (24) of pigmented or solution dyed polymer yarn formed of acrylonitrile fibers. The weave structure is preferably formed of groups (26) of three warp strands or threads (27) and groups (28) of three weft or fill strands or threads (29), line 23 of paragraph 0014.

Claim 11 further requires that the weave density is such as to provide openings between the groups of warp threads and the groups of weft threads of about 0.03 inches to 0.25 inches. Paragraph 0017, line 2, states that the weave pattern may be a plain weave and have a weave density which may be varied to provide openings (30) of from .03 to .25 inches square. Claim 11 further recites that the fabric blocks the transmission of ultraviolet light through the panel in A category wavelength in a range of about 69% to 76%, as stated on page 6, paragraph 0015 beginning on line 4. Claim 11 further recites that the transmission of ultraviolet light is blocked in B category wavelength in a range of about 74% to 78% as further set forth in paragraph 0015, line 6.

Dependent Claim 12 recites that each group of warp threads comprises three threads disposed adjacent one another between the openings which is stated beginning on page 5, paragraph 0014, line 23, which recites that the weave structure is preferably made up of groups (26) of three warp strands or threads (27) and groups (28) formed of three weft strands or threads (29). The spacing of the threads is approximately twenty-nine ends per inch for the warp threads and twenty-four pick per inch for the weft threads leaving approximately 0.063 inch square openings (30) between adjacent groups of threads (26) and (28).

Dependent Claim 13 recites that each group of weft threads comprises three threads disposed adjacent one another between the openings, respectively, which is set forth in the specification as recited immediately hereinabove.

Dependent Claim 14 recites that the yarn weight is not less than a yarn number of about twenty-four. Paragraph 0014, line 21 of the specification, recites that in the fabric (24) the yarn strands preferably have a count or yarn number of twenty-four and are two-ply.

With regard to dependent Claim 15, the recitation in the specification is as indicated immediately hereinabove.

With regard to independent Claim 16, this claim recites a light transmitting window covering panel of ultraviolet radiation resistant fabric formed of acrylic yarn woven in

groups of warp threads and groups of weft threads, the fiber content being about 100% pigmented acrylonitrile polymer which is described in the specification on page 5, paragraph 0014 which recites that the fabric is preferably formed of a pigmented or solution dyed polymer yarn formed of acrylic fibers and has a yarn number of twenty-four and that the weave structure is formed of groups (26) made up of three warp strands or threads (27) and groups (28) formed of three weft strands or threads (29).

Claim 16 further recites that the yarn number is not less than about twenty-four which is recited in paragraph 0014, line 22. Claim 16 further recites openings formed between groups of adjacent warp threads and groups of adjacent weft threads in a range of about .03 to .25 inches as set forth in paragraph 0017 and in paragraph 0014 on line 5 which recites that the weave structure is as recited above.

Claim 16 further recites that the fabric blocks the transmission of ultraviolet light through the panel in A category wavelength of at least about 69% and in B category wavelength of at least about 74%, as set forth in the specification in paragraph 0015, lines 1 through 6.

With regard to dependent Claim 18, which recites that each group of warp threads comprise three threads disposed adjacent one another between openings in the fabric, such is shown in FIGURE 2 and described in the specification on page 5, paragraph 0014, beginning on line 23 and continuing on page 6 wherein it is recited that the weave structure is formed of groups (26) of three warp threads (27) and groups (28) of three weft threads (29) leaving square openings (30) between adjacent groups (26) and (28) of warp and fill threads.

With regard to dependent Claim 19 and referring to FIGURE 2 of the drawings, the recitation in paragraph 0014 as set forth above provides the concise explanation of the subject matter set forth in the claim.

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

The grounds of rejection presented for review are:

The rejection of Claims 14, 16, 18 and 19 under 35 USC 112, second paragraph, as being indefinite with respect to the recitation of yarn number.

The rejection of Claim 11 under 35 USC 103(a) as being unpatentable over the teaching of US Patent 6,037,280 to Edwards et al. in view of US Patent 6,268,450 to Wade and further in view of US Patent 5,503,917 to Hughes.

The rejection of Claims 12 and 13 under 35 USC 103(a) as being unpatentable over Edwards et al. in view of Wade and Hughes and further in view of US Patent 3,417,794 to Lynch et al.

The rejection of Claims 14 and 16 under 35 USC 103(a) as being unpatentable over Edwards et al. in view of Wade and Hughes and further in view of US Patent 2,039,987 to Goldman.

The rejection of Claim 15 under 35 USC 103(a) as being unpatentable over Edwards et al. in view of Wade, Hughes, and Goldman and further in view of US Patent 4,751,117 to Goodfellow.

The rejection of Claims 18 and 19 under 35 USC 103(a) as being unpatentable over Edwards et al. in view of Wade, Hughes and Goldman and further in view of Lynch et al.

ARGUMENT

The Rejection of Claims 14, 16, 18 and 19 Under 35 USC 112

The Examiner has questioned the use of the term "yarn number" in Claims 14 and 16. Appellants respectfully submit that it is well established that terms of the art used in patent applications will be given their ordinary meaning in the art. In this regard, the Examiner has cited portions of the Complete Textile Glossary, 2001, by Celanese Acetate, LLC. This glossary defines yarn number for manufactured filament yarns as being a direct yarn number, equal to linear density and comprising mass per unit length of yarn. Appellants respectfully submit that one of skill in the art in practicing the present invention would use the yarn number having the meaning as set forth in a glossary of the art and that the use of this yarn number would be clear to one of ordinary skill in the art. In this regard Appellants

respectfully submit that they have complied with the requirements of 35 USC 112. Appellants have disclosed and claimed an article which is defined to include manufactured filament yarns (pigmented acrylonitrile polymer) and have specified the yarn number. It is clear that yarn number for manufactured filament yarns is a defined term in the art (as indicated by the Complete Textile Glossary cited by the Examiner). Accordingly, Appellants respectfully submit that the claims on appeal comply with the requirements of 35 USC 112 and that the Examiner's rejection of the claims under this section of the statute be reversed.

The Rejection of Claim 11 under 35 USC 103(a) over US Patent 6,037,280 to Edwards in view of US Patent 6,268,450 to Wade and further in view of US Patent 5,503,917 to Hughes

The Examiner argues that Edwards et al. discloses a porous woven fabric that has increased ultraviolet blocking capability. Edwards et al. discloses a fabric which is provided with UV blocking particles, the fabric being indicated to be useful for clothing. Edwards et al. discloses that the UV blocking particles may have an aspect ratio of from 2 to 10, may be inorganic, organic or metallic and may reside predominantly in the "interstitial spaces" of the fabric or in the "pores" of the fabric. The UV blocking particles are preferably retained within the fabric using a binding agent. Although Edwards et al. suggests that the fabric is porous, Edwards et al. fills the pores or spaces of the fabric with UV blocking particles and thus the fabric of Edwards et al. loses the advantages of light transmissivity, visual perception therethrough and breatheability provided by Appellants' claimed articles. In fact light transmissivity and visual perception therethrough would not, normally, be desired in clothing articles. Thus, Edwards et al. actually teaches away from attributes desired in window covering panels. Moreover, Edwards et al. does not suggest the particular material of the fabrics of Appellants' invention, nor does Edwards et al. teach the provision of fabric with a specified size range of openings and a specified range of UV blocking capability. Appellants respectfully submit that

Edwards et al. also teaches away from providing openings in the fabric or the provision of openings with a specified size range, a specified material and a specified range of UV blocking capability in A Category and B Category wave lengths.

The Wade reference, although disclosing an acrylic fiber polymer precursor for use in fabrics used in outdoor applications, does not disclose or suggest the provision of fabrics for window covering panels having both light transmissivity and UV light blocking characteristics as required by Claim 11 (and Claim 16). Accordingly, substituting an acrylic fiber polymer precursor, as suggested by Wade, for the fabric as disclosed by Edwards et al., would still not provide the overall combination of features required by Claim 11, as pointed out herein and as pointed out in Appellants' previous Brief On Appeal.

Still further, with regard to the teaching of the Hughes reference, this patent does not disclose or suggest the provision of a 100% pigmented acrylonitrile polymer having a weave density, nor a grouping of warp and weft threads, arranged to provide for opening sizes in the fabric in the range required by Claim 11 and which fabric still provides for UV radiation blockage as set forth in the claim. Although the Examiner takes the position that the range of opening sizes, the grouping of threads, and the weave density which provides the opening sizes would be obvious to one of ordinary skill in the art, Appellants respectfully submit that the art cited clearly fails to suggest the claimed range of opening sizes in the fabric, the arrangement of groups of threads between openings or the ability to provide human visual perception through a window covering panel while blocking Category A and Category B UV radiation within the ranges or limits required by Claim 11.

The Rejection of Claims 12 and 13 under 35 USC 103(a) over the Edwards et al., Wade and Hughes references, and further in view of US Patent 3,417,794 to Lynch et al.

Appellants respectfully submit that the further teaching of Lynch et al. with regard to the configuration of warp and

weft threads in shade screens does not further make obvious the overall combination of features set forth in Claims 12 and 13, considering the lack of teaching in all of the references, taken alone or one modified in view of the other, of providing window covering panels having the requirements set forth in these claims. Since Edwards et al., as modified by Wade and Hughes, clearly fails to provide the invention set forth in Claim 11, Appellants respectfully submit that the further requirements of Claims 12 and 13 with respect to the grouping of warp threads and weft threads is not suggested or made obvious by the overall combination of references of Edwards et al., Wade, Hughes and Lynch et al.

The Rejection of Claims 14 and 16 under 35 USC 103(a) over the teaching of Edwards et al. in view of Wade, and Hughes and further in view of US Patent 2,039,987 to Goldman

The Goldman reference is cited for disclosing or suggesting the provision of a yarn number of about twenty-four in open weave sunscreen material. However, the teaching of Goldman does not further make obvious to one of ordinary skill in the art the overall combination of features set forth in Claims 14 and 16. Appellants respectfully submit, as stated hereinabove, that Edwards et al. actually does not teach providing a fabric with openings and also having UV light blocking capability, since Edwards et al. requires the addition of UV blocking particles which actually block or fill the openings in the fabric of Edwards et al. Wade merely suggests the provision of acrylonitrile fibers as a precursor and Hughes merely suggests the provision of nylon fabrics for clothing wherein various yarn counts are tested for UV light transmissivity.

The further citation of Goldman does not provide for the overall combination of features of Claims 14 and 16. In this regard, Appellants respectfully submit that, the citation of a large number of references in rejecting the claims, wherein the rejections require the combination of at least three, four or five references, is evidence in itself that the invention set forth in the claims on appeal is not obvious to

one of ordinary skill in the art within the meaning of the statute.

The Rejection of Claim 15 under 35 USC 103(a) over Edwards et al. in view of Wade, Hughes, Goldman and US Patent 4,751,117 to Goodfellow

The Examiner cites Goodfellow as teaching that providing a yarn with two plies increases strength. However, Goodfellow provides no other suggestion or teaching which would lead one of ordinary skill in the art to make the overall combination of features set forth in Claim 15, including, in particular, the features of Claims 11, 14 and 15 combined. Accordingly, the rejection of Claim 15 under the obviousness test is believed to be improper also.

The Rejection of Claims 18 and 19 under 35 USC 103(a) over Edwards et al. in view of Wade, Hughes, Goldman and Lynch et al.

Again, the Examiner has relied on a total of five references to reject claims to a light transmitting window covering panel having particular fabric material requirements, including weight, weave density that provides a particular range of opening sizes in the fabric, and a particular grouping of warp threads and weft threads, all to provide an unexpected result in the way of human visual perception through and breatheability of the fabric while blocking UV radiation in particular ranges in A Category and B Category. As pointed out hereinabove, there is no suggestion in the secondary references to modify Edwards et al. to substitute 100% pigmented acrylonitrile polymer for the Edwards et al. fabric which has UV light blocking particles, as required by Edwards et al., nor the yarn number, weave density and grouping of threads suggested by the secondary references. The overall combination of features set forth in Appellants' claims are not made obvious to one of ordinary skill in the art in view of the art cited by the Examiner. The prior art clearly fails to suggest making the combinations of features set forth in Appellants' claims, as has been pointed out throughout the prosecution of this application.

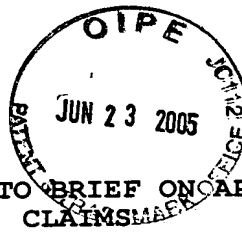
Accordingly, Appellants respectfully submit that the Examiner has erred in rejecting Claims 11 through 16, 18 and 19 over the prior art of record, that the claims as presented for consideration on appeal are in compliance with the requirements of the statute, are allowable and that such claims should be passed to issue.

Respectfully submitted,

Date: 6/20/05

Michael E. Martin
Michael E. Martin
Registration No. 24,821
Agent for Appellants

Gardere Wynne Sewell LLP
1601 Elm Street, Suite 3000
Dallas, Texas 75201-4761
Phone (214) 999-3000
Fax (214) 999-3623



APPENDIX TO BRIEF ON APPEAL
CLAIMS

Claim 11. A light transmitting window covering panel formed of a fabric comprising staple fiber acrylic yarn woven in groups of warp threads and groups of weft threads, the fiber content of said yarn being about 100 percent pigmented acrylonitrile polymer, and the weave density being such as to provide openings between said groups of warp threads and said groups of weft threads of about 0.03 inches to 0.25 inches to provide human visual perception through said panel and blocking the transmission of ultraviolet light through said panel in A category wavelength in a range of about 69 percent to 76 percent and in B category wavelength in a range of about 74 percent to 78 percent.

Claim 12. The window covering set forth in Claim 11 wherein:

each group of warp threads comprises three threads disposed adjacent one another between said openings, respectively.

Claim 13. The window covering set forth in Claim 11 wherein:

each group of weft threads comprises three threads disposed adjacent one another between said openings, respectively.

Claim 14. The window covering set forth in Claim 11 wherein:

the yarn weight is not less than a yarn number of about 24.

Claim 15. The window covering set forth in Claim 14 wherein:

the yarn is 2 ply.

Claim 16. A light transmitting window covering panel comprising an ultraviolet radiation resistant fabric formed of acrylic yarn woven in groups of warp threads and groups of weft threads, the fiber content of said yarn being about 100 percent pigmented acrylonitrile polymer, the yarn weight being not less than a yarn number of about 24 and the weave density of said fabric is such as to provide openings between groups of adjacent warp threads and groups of adjacent weft threads in a range of about 0.03 to .25 inches square to provide human visual perception through said panel and blocking the transmission of ultraviolet light through said panel in A category wavelength of at least about 69 percent and in B category wavelength of at least about 74 percent.

Claim 18. The window covering set forth in Claim 16 wherein:

each group of warp threads comprises three threads disposed adjacent one another between said openings, respectively.

Claim 19. The window covering set forth in Claim 16 wherein:

each group of weft threads comprises three threads disposed adjacent one another between said openings, respectively.